

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-13989
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JAN 26, 2007 THOMAS K. KAHN CLERK

D.C. Docket No. 05-00098-CV-ORL-31-DAB

TRISTAR LODGING, INC.,
d.b.a. Hampton Inn,

Plaintiff-Appellant,

versus

ARCH SPECIALTY INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(January 26, 2007)

Before BLACK, MARCUS and COX, Circuit Judges.

PER CURIAM:

Tristar Lodging, Inc. (“Tristar”) appeals a judgment entered for Arch Specialty Insurance Co. (“Arch”). Tristar contends that the magistrate judge erred in disposing

of the case without a jury trial, in refusing to enter a judgment for Tristar confirming an appraisers' award, and in denying Tristar an award of attorneys' fees and costs.

We find no reversible error. Tristar waived any right it had to a jury trial. (R.6-79 at 2; R.12-101 at 3.) And, we find no error in the magistrate judge's finding that "there is no evidence in this record to support . . . a conclusion" that Arch "failed to timely pay all insurance proceeds due and owing." (R.7-99 at 14.) (quotation omitted.) Because there was "no showing that the insurer failed to timely pay claims properly made and substantiated, sufficient to warrant the suit," Tristar was not entitled to attorneys' fees pursuant to § 627.428 Fla. Stat. (R.7-99 at 18.) And, Tristar was not entitled to a judgment affirming the appraisal for the reasons stated in the magistrate judge's order. (R.7-99 at 19-20.)

AFFIRMED.